

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

ANTHONY DUANE MILLS

PLAINTIFF

v.

CIVIL ACTION NO. 5:18-cv-15-DCB-MTP

TRAVIS PATTEN, ET AL.

DEFENDANTS

REPORT AND RECOMMENDATION

Plaintiff previously named Timothy Blalock—his former criminal defense counsel—as a defendant in this action. On August 14, 2018, Defendant Blalock filed a Motion to Dismiss [33]. On January 24, 2019, the parties appeared and participated in an omnibus hearing before the undersigned United States Magistrate Judge. The Court scheduled the hearing for the combined purposes of conducting a *Spears*¹ hearing, scheduling/case management hearing, and discovery conference.

During the *Spears* hearing, Plaintiff stated that he no longer wishes to pursue his claims against Timothy Blalock. The Court explained that the dismissal of Blalock would be with prejudice. Plaintiff testified that he understood the consequences of such a dismissal. Plaintiff also testified that he is not under any undue influence or pressure to dismiss his case and is doing so voluntarily.

Thus, the undersigned recommends that:

1. Timothy Blalock be dismissed with prejudice,
2. the Motion to Dismiss [33] be denied as moot, and
3. this case continue as to the remaining Defendants.

¹ *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985).

NOTICE OF RIGHT TO OBJECT

In accordance with the rules and 28 U.S.C. § 636(b)(1), any party within fourteen days after being served a copy of this recommendation, may serve and file written objections to the recommendations, with a copy to the judge, the magistrate judge and the opposing party. The District Judge at the time may accept, reject or modify in whole or part, the recommendations of the Magistrate Judge, or may receive further evidence or recommit the matter to this Court with instructions. The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendations contained within this report and recommendation within fourteen days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions accepted by the district court to which the party has not objected. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

THIS the 28th day of January, 2019.

s/ Michael T. Parker

United States Magistrate Judge